

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

GABE (GABRIEL) HILLEL KAIMOWITZ

Plaintiff,

Jury Trial is demanded for
those issues amenable to
that process.

v.

Case No. 1:16-cv-00257-MW-GRJ

SUPERVISOR OF ELECTIONS, etc.; JOHN HARKNESS, individually as well as in his capacity as Florida Bar executive director, and his agents, employees, assignees, including those who are judges; **EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC. (EJCBA)** and **FLORIDA BLUE KEY, INC. (FBK)**,

Defendants.

PLAINTIFF'S MOTION FOR DECLARATORY RELIEF

COMES NOW PLAINTIFF and moves this Court for declaratory relief from Article V, Florida Constitution, and (Art. V) and enabling statutes promulgated after 1972, insofar as their implementation and enforcement deny basic voting rights to him and all others in Alachua County, FL/ They are guaranteed by the 15th Amendment to the United States Constitution. "Amendment XV Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude. Section 2. The Congress shall have power to enforce this article by appropriate legislation."

The grounds for this request are as follows:

Plaintiff and those of like-minded African-Americans have had their rights to say who will sit as judges in the 8th Judicial Circuit and Alachua County diluted every time a local election is resolved without opposition. No African-American has ever been elected to the 8th Judicial Circuit Court. Only one has been elected to any of the six counties in that Circuit.

ATTEST: 

How Defendants Worked to Dilute Black Voting Strength in Judicial Elections

1. In the late 1960s, a Constitutional Revision Commission was established. The Constitution of 1885 was drastically revised and generally approved by voters in 1968.
2. That provision concerning the state judiciary was included in the Florida Constitution of 1885, as amended in 1956. Its original enactment came at the end of the Reconstruction period after the Civil War, when whites began to reassert dominance over African-Americans, and to develop various devices, including literacy tests, and poll taxes, to exclude blacks from the polls. Among the institutions started in that era, in 1876, are the area's only daily, the *Gainesville Sun*, and the boutique law firm of Dell Graham P.A.
3. The University of Florida was established in Gainesville by 1905. White Christian men apparently concerned about legal practice in the state from the outset created a secret honor society—Florida Blue Key (FBK). FBK separated itself from a Blue Key national organization in 1935. FBK leaders primarily have J.D. degrees.
4. The modern Florida judicial system, i.e. Article V, of the Florida Constitution, as modified, 1949-50, 1956-57, 1968-72, was developed with intent by the Florida Bar, to maintain benefits for whites of Jim Crow racial segregation laws and exclude blacks—but not other minorities—from getting bench seats below the Supreme Court.
5. The path to a separate and racially unequal modern Florida judicial system of judges and judicial selection could be said to have been started in 1949-50 with the approval of the all-white Florida Supreme Court of the “integration” of all members and applicants under the newly formed Florida Bar. Everybody had to belong—only the white founders agreed among themselves that African-Americans who had to pay dues on an equal footing with whites should be barred from social events—like quarterly semi-annual or annual conventions.

6. All future members would have to belong to the Bar, including African-Americans who were coming into the state from other law schools. Articles in the *Florida Bar Journal* and the *UF Law Newsletter* cite to 1950 Bar minutes show the Bar's racially discriminatory intent.

7. Prominent identified whites, several of whom were FBK members, agreed to a system which would deny social opportunities including access to Bar conventions to Negro members. The 1951 Bar roster suggests that one African-American was a member in that year.

8. That understanding has never been changed. The 2012 *UF Law Newsletter* article identifies a perceived change finally occurring by the selection of an African American as Bar president (Gene Pettis [FBK 1982]) in that year. No other currently is in sight, although an African-American was slated to lead the Bar this year, until a prior DUI arrest was revealed.

9. But what was happening in the Bar in the early 1950s has to be viewed in the context of the Jim Crow system which pervaded law enforcement and the legal profession in that era. In 1949-50, white Florida judges and jurists could be presumed to be upholders if not supporters of Jim Crow laws and practices, just as German judges who survived the purges in the Western (outside of Soviet control) could be assumed to have enforced Nazi laws during and before World War II. Few others would be qualified to sit as judges in either system.

10. In Florida, after World War II, in and around the Camp Blanding area near Gainesville, a state historian reported that German POWs generally were treated better in that area than returning blacks.

11. After World War II, blacks and whites returning from military service reportedly had different expectations of civilian life in Florida. In 1944, the United States Supreme Court had ruled that so-called white primaries were unconstitutional.

12. In Florida for decades that assured Democrats would hold office, and gain patronage, including selection of judges. Further, President Harry S. Truman in 1948 ordered racial integration in the military. Things seemed to be looking up for black folks. Not in Florida.

13. In Florida, Willis McCall, Lake County sheriff since 1948, made clear that the Jim Crow white view of justice, often enforced by the Ku Klux Klan, would prevail.

14. To support murder of prisoners in his charge, the Florida judicial system responded as if nothing had been changed, from 1950-64.

15. The late Alex Akerman (FBK) of Orlando did represent the so-called Groveland Four until all were convicted and three sentenced to death, but he did not pursue the case thereafter. That was left to black attorneys primarily from out of state whose lives were often threatened.

16. In adjacent Orange County, the state NAACP director Harry Moore and his wife in bed at home were killed by a bomb, in a still unsolved case (though Chain Gang Charlie Crist as Attorney General later announced that four dead KKK were the only ones responsible.)

17. In Columbia County adjacent to Alachua, a wealthy black woman was tried and almost lynched for killing her white lover and father of her child. *The Gainesville Sun* reported on a “Jim Crow era” documentary which was made about that 1952 killing.

18. The difference between black and white perceptions—including that of the Florida Bar--of those events are made clear in Gilbert King’s (white) *Devil in the Grove*, *Thurgood Marshall, the Groveland Boys, and the Dawn of a New America*, (Harper Collins New York 2012)(hardback)(Pulitzer Prize) and Marvin Dunn, Ph.D., *A History of Florida Through Black Eyes*, (CreateSpace Independent Pub. Platform, North Charleston, S.C. 2016).

19. The white historical version of racial progress in Florida long have been perpetuated by two FBK historians—former UF Provost David Colburn, and Michael Gannon. For decades,

Prof. Colburn perpetuated his views in monthly columns in the *Orlando Sentinel* and the *Gainesville Sun*.

20. The State paid me \$6,500 after its lawyers gave me an additional \$3,028, to settle claims I made against UF and Professor Colburn that he interfered with business relations I had with University of Florida Press.

21. The Press was considering outlines and sample chapters I was submitting on two works about continuing racial segregation in Orlando and at the *Orlando Sentinel* in the 1980s.

22. Professor Colburn's primary legal fictions support Gov. Leroy Collins (FBK)(1955-61), as a progressive in race relations who avoided violence which plagued other Bible Belt states,. But the white historian's gushing is reserved for the governorship of Reubin Askew (FBK) as (1971-1979).

23. Askew is credited with three token but critical appointments of blacks to positions not held by any African-American since Reconstruction (1865-1876), including that of attorney Joseph Hatchett to the Florida Supreme Court. The Honorable Hatchett would move on to be the only African-American appointed to the U.S. Court of Appeals for the 5th Circuit before the 11th Circuit was created in 1981.

24. But by the 21th Century, one of Governor Askew's three appointees, M. Althalia Range was complaining to the *New York Times* that blacks in Florida felt left out of the state's progress as population shifts created by white Northerners and Cubans moving into the state, had diluted whatever progress had been made.

25. However, for whites and blacks in Florida as elsewhere in the South, the key change was made by the United States Supreme Court years earlier. in 1954. The late Harper Lee wrote about those changes in 1958.

26. But that novel read by millions now, *Go Set A Watchman*, was not published until 2015 (Harper-Collins New York). The plot is simple. An adult daughter returning from New York to her roots, in small town Alabama, discovers that her beloved Atticus Finch, her father, and a prospective husband were prepared to listen even to threatened violence being preached to stop the desegregation of schools at all levels mandated in 1954 by the U.S. Supreme Court.

27. In 1960, as a journalist for a news syndicate, Plaintiff had watched well-meaning whites heed the proposed violence of an agitator John Kasper and saw Jews cowed after the bombing of a synagogue, because school integration was planned for Nashville, TN, one grade at a time (starting in the first grade, so that children already in the system would not be affected.)

28. In the 1950s, Ms. Lee's editor and agent persuaded her that it would be better to have the fictionalized version of the father she idolized when he was a practicing lawyer and state legislator in Alabama in the 1930s (with roots in Northern Florida as well) and she was a child.

29. Her novel *To Kill A Mockingbird* became a best seller second only to the Bible.

30. That fiction was vital to create the belief system still haunting Florida that such a character as the good lawyer Atticus Finch, did and could exist, if not in Alabama, then surely in this Sunshine State, to make sure that truly innocent blacks could get justice, even in the South.

31. In real life, that fictional bubble burst in Florida when the U.S. Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), unanimously reversed *Plessy v. Ferguson*, 163 U.S. 547 (1896). All school segregation in the South was unconstitutional. That decision should have been enough but wasn't to have required Florida to set aside its state constitutional mandate to require separate schools for blacks and whites from elementary school through higher education. Oaths apparently mean something to lawyers in Florida—except apparently when it comes to racial segregation.

32. In Florida, one result relevant here is that every attorney admitted to practice between 1955 and 1968, swore to uphold both the U.S. and Florida Constitutions, even though those documents contradicted one another with regard to the issue of school segregation. Among them were 11th Circuit U.S. Court of Appeals Judge G. B. Tjoflat, and Senior Judge Maurice M. Paul, of this Northern District of Florida, and Atticus Finch prototypes like Chesterfield Smith and Sandy D'Alemberte, and even a black like U.S. Rep. Alcee Hastings.

33. Florida fought back against the *Brown* ruling, as vigorously as any other Southern State. FBK members were at the heart of that fight, especially to protect the pristine white University of Florida, from the taint of blacks. After all they had taken have taken oaths to protect the interests of that flagship institution. That apparently counted more than the Bar oath.

34. That meant support of a 5-2 Florida Supreme Court opinion of Justice B. K. Roberts, in *ex rel Virgil Hawkins v. State Board of Control*, 93 So.2d 354 (FL 1957). That opinion states in pertinent part that Florida state courts could ignore United States Supreme Court orders if obedience to them would result in violence and mischief. The idea of a black enrolling as a student surely would set off that violence and mischief.

35. The Florida Supreme Court decision resulted in the continuing exclusion from the UF Law School of a black who sought admission starting in 1949. That Roberts decision has never been overturned or modified. Before his death in 1999 Roberts informed an *Orlando Sentinel* journalist that he believed the U.S. Supreme Court supported his interpretation of the law.

36. Hawkins' attorneys moved for his admission in a Florida federal court. That court merely ordered that Hawkins and any other African-American could compete equally for entrance by passing a comparatively recent entrance exam. Hawkins failed.

37. One black, George Starke, did pass, but apparently left in his sophomore year, according to a classmate, Fred Levin. Levin later had the UF law school named for him, after he made a multi-million dollar donation.

38. Defendant conspirators thereafter perpetrated a legal fiction to suggest that Hawkins generously stepped aside when UF agreed to admit other African-Americans. No such agreement is known to exist. The facts are as described above. That pseudo accommodation to progress is necessary to cloud the fact that the University of Florida would be protected at all costs, especially if and when it might be sued for racial discrimination.

39. When such litigation was started in New Jersey by former UF law professor Sherrie Russell-Brown, the civil action was moved by the defendants to this court. After her action was dismissed, attorney fees and costs resulted in a demand for more than \$600,000 to compensate this Court for the consideration it had shown to her claims.

40. FBK members not only responded with a series of decisions to deny Virgil Hawkins entry into the UF School of Law, up to and including Justice B. K. Robert's 1957 opinion, (at least two FBK members were on that bench) but also with an *Interposition Resolution*, which was passed by a clear majority of both houses of the Florida legislature.

41. Again it was time for the myth makers to step forward to show the world that Florida could take integration of blacks into the state's institutions in stride. Florida Gov. Leroy Collins (FBK), (1956-61) a known segregationist, deplored the Resolution but could do nothing about it. Yet his own liberal image was restored when he seemed to be everywhere in support of JFK's successful run for the U.S. presidency in 1960. But no more than a few blacks went to white schools while Collins was governor. That may have happened in Dade County.

42. FBK still illustrates its website with a photo of JFK at the 1957 FBK event on campus with Stephen J. O'Connell, (FBK) future Florida Supreme Court Justice and University of Florida president; future U.S. Senator George Smathers (D-F), (FBK) a leading opponent of the 1964 federal Civil Rights Bill, and future State Rep. Wayne Reitz, (FBK) whose anti-black, anti-gay activities resulted in recent demands to have his name removed from the UF's Reitz Union. Each of them (except JFK) has had a UF building named for him,

43. But the real illusion of parity and opportunity for blacks was generated in the legal system. Seemingly some of the changes to Article V, had little to do with them, and their access to the state courts. In 1956, Florida revised Article V, of the 1885 Constitution to create a tier of appellate courts, to separate trial courts from ready appeals to the Florida Supreme Court.

44. By 1980, the Florida Supreme Court was divesting itself of jurisdiction of many conflicts the highest state court previously heard. Also, in 1956, the state constitution of 1885 was modified to shift control of procedure,, rules, discipline and admission from the State Legislature to the judiciary.

45. In 1968, when Florida finally changed much of its Constitution, Article V remained untouched. But major changes were taking place in the State, including violent and non-violent actions to protest dissatisfaction with lack of progress in civil rights.

46. Gainesville, Florida, was among the most affected, despite legal fictions to the contrary. Fire bombings occurred. Among those targeted was Circuit Court Judge James C. Adkins. Judge Adkins later would become Supreme Court Justice Adkins. Justice Adkins was one of four Supreme Court justices caught up in individual charges of wrongdoing. But Today, his name is on an "Inn" of distinguished white lawyers, in Gainesville. Included is County Judge Tom Jaworski, whose name should be on the ballot this year.

47 In 1968, Judge Adkins held a white professor's wife, Carol Thomas, and a black organizer, Jack Dawkins without bond for weeks, until their release was forced by out-of state-attorneys. By the end of 1968, Dawkins' attorney Bill Kuntsler, publicly reported his belief that his client had been murdered.

48. Also in 1968, UF hired its first black law professor Spencer Boyer. But Professor Boyer never taught at UF Law School because his life had been threatened. So he went elsewhere.

49. In that atmosphere, the Constitution Revision Commission considered its mandate to change Article V. Numerous changes were made, before Chesterfield Smith (FBK), realized that not a single black had participated on the Commission.

50. Who then stood to gain from the changes in Article V, AFTER the 1885 Constitution already had been modified to update the document in the 20th Century in 1968?

51. Professor Little in his law review article about the history of the state constitutional changes to Article V, concluded as follows; "In sum, accountability of the judicial branch of state government has gradually been transferred away from the electorate, and its elected representatives to the supreme court and the Florida Bar while during the same period a broad range of legislative and regulatory powers have been transferred from the legislature to the supreme court or claimed by the court itself. Proposals to further estrange the judicial branch from accountability at the ballot box should be examined fro this point of view," Prof. Joseph W. Little, "An Overview of the Historical Development of the Judicial Article of the Florida Constitution," 19 *Stetson L. Rev.* 1, 41 (Fall 1989)\

52. No black was elected to any of the Circuit's county courts until 2004 when Judge Walter Green, a veteran prosecutor with 15 years of experience, finished second in a run-off, and then bested one of the white attorneys who won the primary but lost the election.

53. The Honorable Stephan P. Mickle was the token selected to be the first black on the Alachua County Court; the 8th Judicial Circuit; the 1st District Court of Appeal and finally the U.S. District Court for the Northern District of Florida. **He apparently has never been elected to any judicial post.**

54. Today, there is common knowledge among local black leaders that Judge Mickle had a stroke several years ago. Is Judge Mickle still functioning?. A white clerk at the Gainesville Division of this Court reports that Judge Mickle is not included in case assignments draw.

55. The chief judge on Feb. 23, 2014 issued an order transferring most of his cases to Senior Judge Maurice M. Paul and some to Judge Mark Walker who sits in Tallahassee.

56. A white security officer reports that Judge Mickle stops by to pick up his mail about once a month. The court directory still lists him as having a phone and office.

Judge Mickle for years was the only African-American adjunct professor at UF in the trial advocacy and clinic programs which have provided salary supplements for chosen former and current EJCBA judges like the Honorables Toby S. Monaco and his former partner Senior Judge Peter Sieg, Chester Chance, and Larry Gibbs Turner. Despite their presence, none of the hundreds of African-American law students they have trained has been capable of serving on the 8th Judicial Circuit Court. Gossip has not suggested any black to date.

57. Other African-Americans appointed in Alachua County are Judges Phyllis Kotey and Shirley Miller-Jones. Neither was ever elected. Judge Miller-Jones is NOT on the ballot so far.

58 No black female has ever been president of the Florida Bar, FBK, or EJCBA although Meshon Rawls, a UF Law faculty member, is expected to be the first EJCBA female black president next year. The first white ECBA president Clara Gehan was elected in 1942.

59. At an EJCBA function, Supreme Court Justice Peggy Quince (FBK), the only

African-American woman who has sat on the State's highest court did appear with three of the organization's white females, each of whom had been president of that organization.

60. EJCBA this year did receive the *pro bono* achievement award from the Florida Bar.

61. EJCBA has its own extensive operation for judges and lawyers and lawyers including its own Rules of Professional Conduct, and a long-standing Bench/Bar Committee which can and has assisted local attorneys to avoid Florida Bar disciplinary measures.

62. Judge Green and Glorimar Walker, a Three Rivers Legal Services attorney, have been the token blacks on that Committee which can determine disciplinary action against members.

63. The principal mechanism for determining who shall be seated on the circuit and county court benches according to Pam Carpenter, retiring Supervisor of Elections, is "gossip."

64. That appears to be corroborated by a "novel" about the 8th Judicial Circuit published in 2007 by retired judge Nath Doughtie.

65. This year when for the first time two black incumbents—Judge Green and, by appointment only, Judge Shirley Miller-Jones—did seek indicate their intent to seek office, neither of them nor the lone white for County Judge—Tom Jaworski—will appear on the ballot or fill out a Bar Voluntary Disclosure Statement.

66. For lawyers, the good news is that the Florida Bar again is conducting a judicial poll among attorneys, so that at least the profession will know how highly each judge or justice is rated by members of the Florida Bar who have encountered one or more jurists.

67. In brief, nothing in Article V of the State Constitution or its implementing statutes have provided any meaningful opportunity for African-Americans and other blacks to participate in the judicial selection process.

66. They and their civil rights advocates like Plaintiff thus are being denied the rights assured to all American citizens by the Fifteenth Amendment to the United States Constitution.

WHEREFORE, having no other meaningful remedy at law or in equity, Plaintiff moves this Court to declare that Article V of the Florida Constitution and its implementing statutes including F.S. §105.31 dilutes the rights of African-Americans and their champions to participate in the judicial selection process in Alachua County, Florida.

VERIFICATION (28 U.S.C. §1746)

I, Gabe Hillel Kaimowitz, am the sole preparer of this pleading and I am responsible for these contents as well as the contents submitted herewith.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Aug. 13, 2016.

(Signature) ***Gabe Hillel Kaimowitz***

Respectfully submitted, *Gabe H. Kaimowitz*

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CERTIFICATE OF SERVICE

A copy of this motion is being e-mailed and a hard copy sent on Aug. 17, 2016, by first class to each named Defendant and/or his or her registered agent:

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